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This Document Prepared by
and after Recording Return to:

MB Financial Bank N.A.
1200 N. Ashland Ave.
Chicago, Illinois 60622
Attn: Sandra Biske

LN# 216807

0020958323

1393/0075 90 001 Page 1 of 4213
2002-08-30 09:14:21
Cook County Recorder 43.50



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**LANDLORD'S ASSIGNMENT OF RENTS AND LEASES
AND
LESSEE'S CONSENT TO ASSIGNMENT OF RENTS
AND SUBORDINATION OF LEASE TO MORTGAGE**

THIS LANDLORD'S ASSIGNMENT OF RENTS AND LEASES AND LESSEE'S CONSENT TO ASSIGNMENT OF RENTS AND SUBORDINATION OF LEASE TO MORTGAGE (the "Assignment") is made and delivered as of the 23rd day of July, 2002 by **Ahern Family L.L.C.**, an Illinois limited liability company ("Assignor"), and **Wm. J. Cassidy Tire & Auto Supply Co.**, to and for the benefit of **MB Financial Bank, N.A.**, 1200 N. Ashland Avenue, Chicago, Illinois, 60602 ("Assignee").

RECITALS:

A. Assignee has agreed to loan to Assignor the principal amount of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00) (the "Loan"). The Loan is in connection with Assignor's acquisition of the property located at 7000 W. Ogden Avenue, Berwyn, Illinois. Assignor acquired said property on December 27, 2001 and has leased the property to Wm. J. Cassidy Tire & Auto Supply Co. Assignor is executing, among other documents, a certain Mortgage Note of even date herewith (the "Note") payable to the order of Assignee to evidence the Loan.

B. A condition precedent to Assignee's extension of the Loan to Assignor is the execution and delivery by Assignor of this Assignment.

C. **NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

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1. **Definitions.** All capitalized terms which are not defined herein shall have the meanings ascribed thereto in that certain Mortgage of even date herewith from Assignor for the benefit of Assignee (the "Mortgage").

2. **Grant of Security Interest.** Assignor hereby grants, transfers, sets over and assigns to Assignee, all of the right, title and interest of Assignor in and to (i) all of the rents, issues, profits, revenues, receipts, income, accounts and other receivables arising out of or from the land legally described in Exhibit A attached hereto and made a part hereof and all buildings and other improvements located thereon (said land and improvements being hereinafter referred to collectively as the "Premises"); (ii) all leases and subleases (collectively, the "Leases"), now or hereafter existing, of all or any part of the Premises; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is given to secure:

(a) Payment by Assignor when due of (i) the indebtedness evidenced by the Note and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to Assignee by Assignor under or with respect to the Loan Documents (as defined in the Note); and (iii) all costs and expenses paid or incurred by Assignee in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(b) Observance and performance by Assignor of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Assignor or any other obligor to or benefitting Assignee which are evidenced or secured by or otherwise provided in the Note, this Assignment or any of the other Loan Documents, together with all amendments and modifications thereof.

3. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that:

(a) this Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor is the Lessor under all Leases;

(c) Assignor has not made any other assignment of its entire or any part of its interest in or to any of the Leases, or any of the rents, issues, income or profits assigned hereunder, nor has either Assignor entered into any agreement to subordinate any of the Leases or such Assignor's right to receive any of the rents, issues, income or profits assigned hereunder;

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20958323

(d) Assignor has not executed any instrument or performed any act which may prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation; and

(e) there are no defaults under any Leases.

4. **Covenants of Assignor.** Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) No later than **August 15, 2002**, Assignor shall deliver to Lender a true, complete and correct copy of an executed lease between Assignor and Wm. J. Cassidy Tire & Auto Supply Co. providing for Wm. J. Cassidy Tire & Auto Supply Co. to make monthly payments of rent to Assignor, commencing not later than July 1, 2002, at a rate consistent with prevailing market rates for comparable premises. Assignor shall deliver to Lender a true, complete and correct copy of executed leases for any other portions of the premises that are leased, and further provided that Assignor shall furnish to Assignee notice of the execution of any such lease that is executed after the closing date and a true, complete and correct copy thereof;

(b) Any lien, security interest or other property right of Assignor in any tenant=s property located on the Premises, whether created by contract, statute or otherwise, shall be, and is hereby, subordinated to Lender=s rights under this Assignment, the Mortgage, Second Mortgage and the other Loan Documents, and Assignor shall not seek to enforce, exercise or realize upon any such lien, security interest or property right unless (i) the tenant fails to pay the rent when due to Assignor and such default remains uncured for at least fifteen (15) days after Lender=s receipt of written notice thereof, and (ii) Assignor has made and continues to make all payments when due to Lender under the Loan Documents;

(c) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof. Assignor shall not (i) release the liability of any tenant under any Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to any tenant termination or cancellation of any Lease, or (v) enter into any oral leases with respect to all or any portion of the Premises;

(d) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits;

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4

20958323

(e) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder;

(f) Assignor shall not modify the terms and provisions of any Lease, nor shall Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease;

(g) Assignor shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder;

(h) Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or suffer to be done anything which would terminate any such guaranty as a matter of law;

(i) Assignor shall not waive or excuse the obligation to pay rent under any Lease;

(j) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear;

(k) Assignor shall give prompt notice to Assignee of any notice of any default on the part of the lessor with respect to any Lease received from any tenant or guarantor thereunder;

(l) Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder and shall immediately notify Assignee of any breach by the tenant or guarantor under such Lease of the same;

(m) Assignor shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

(n) Assignor shall not execute hereafter any Lease unless there shall be included therein a provision providing that the tenant thereunder acknowledges that such Lease has been assigned pursuant to this Assignment and agrees not to look to Assignee as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash by Assignee as security for tenant's performance under such Lease;

(o) In the event that any tenant under any Lease is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which shall be applied in accordance with the provisions of Paragraph 8 below.

3. **Rights Prior to Default.** So long as an Event of Default (as defined in Paragraph 6) has not occurred, Assignee shall not demand from tenants under the Leases or any other person liable thereunder any of the rents, issues, income and profits assigned hereunder, and Assignor shall have the right to collect, at the time (but in no event more than thirty days in advance) provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

4. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach of Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Mortgage or (b) any other Event of Default described in the Note, Mortgage or the other Loan Documents.

5. **Rights and Remedies Upon Default.** At any time upon or following the occurrence of any Event of Default, Assignee, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor or any guarantor of the Note from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents:

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6

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and Assignor shall facilitate in all reasonable ways Assignee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Assignee; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate and shall be secured by this Assignment.

6. **Application of Proceeds.** All sums collected and received by Assignee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of Default shall be applied as follows:

(a) First, to reimburse Assignee for all of the following expenses, together with court costs and reasonable attorneys' fees and including interest thereon at the Default Rate: (i) taking and retaining possession of the Premises; (ii) managing the Premises and collecting the rents, issues, income and profits thereof, including without limitation, salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary and proper; (iii) operating and maintaining the Premises, including without limitation, payment of taxes, charges, claims, assessments, water rents, sewer rents, other liens, and premiums for any insurance required under the Mortgage or any of the other Loan Documents; and (iv) the cost of all alterations,

20958323

renovations, repairs or replacements of or to the Premises which Assignee may deem necessary and proper.

(b) Second, to reimburse Assignee for all sums expended by Assignee pursuant to Paragraph 7(d) above, together with interest thereon at the Default Rate;

(c) Third, to reimburse Assignee for all other sums with respect to which Assignee is indemnified pursuant to Paragraph 9 below, together with interest thereon at the Default Rate;

(d) Fourth, to reimburse Assignee for all other sums expended or advanced by Assignee pursuant to the terms and provisions of or constituting additional indebtedness under any of the other Loan Documents, together with interest thereon at the Default Rate;

(e) Fifth, to the payment of all accrued and unpaid interest under the Note;

(f) Sixth, to payment of the unpaid principal balance of the Note and any and all other amounts due thereunder or under the other Loan Documents; and

(g) Seventh, any balance remaining to Assignor, its respective legal representatives, successors and assigns or to such other parties which may be legally entitled thereto.

7. **Wm. J. Cassidy Tire & Auto Supply Co., Consents to Assignment and Subordination of Lease to Mortgage.** Wm. J. Cassidy Tire & Auto Supply Co. hereby acknowledges that as the anticipated lessee of the Premises which Assignor wishes to build out and remodel with the Loan proceeds, Wm. J. Cassidy Tire & Auto Supply Co. will benefit from the Loan made by Assignee to Assignor, and Wm. J. Cassidy Tire & Auto Supply Co. therefore consents to all of the rights granted to Assignee under this Assignment and agrees that any rights it may have under any Lease now or hereafter in effect between it and Assignor shall at all times remain subject and subordinate to Assignee's rights under this Assignment and under any of the other Loan Documents, including without limitation Assignee's rights under the Mortgage.

8. **Limitation of Assignee's Liability.** Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this

20958323

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Assignment. Assignor shall and does hereby agree to defend (using counsel satisfactory to Assignee), hold harmless and indemnify Assignee from and against any and all liability, loss or damage which Assignee may incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease. Should Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Assignee for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Mortgage, and no exercise by Assignee of any of the rights set forth herein or in the Mortgage shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof or of the Mortgage.

20958323

9. **No Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments, and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

10. **Further Assurances.** Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Assignee may designate) and shall do or cause to be done such further acts, as Assignee may request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.

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9

20958323

11. **Security Deposits.** Assignor hereby acknowledges that Assignee has not received any security deposited by any tenant pursuant to the terms of the Leases and that Assignee assumes no responsibility or liability for any security so deposited.
12. **Severability.** In the event that any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Assignee, Assignor shall negotiate an equitable adjustment of the affected provision in order to effect, to the maximum extent permitted by law, the purpose of this Assignment, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.
13. **Successors and Assigns.** This Assignment is binding upon Assignor and their legal representatives, successors and assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns.
14. **Written Modifications.** This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.
15. **Duration.** This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents, after which Lender shall execute, at Borrower's request, a recordable release of this Assignment prepared by Borrower and reasonably acceptable to Lender.
16. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.
17. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of Assignor and Assignee, as the case may be, as specified in the Mortgage.
18. **JURISDICTION AND VENUE.** ASSIGNOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY EITHER OF THEM AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS ASSIGNMENT OR ANY OF THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. ASSIGNOR WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN IMPROPER OR INCONVENIENT FORUM. THE EXCLUSIVE CHOICE OF FORUM

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10

FOR MORTGAGOR SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY ASSIGNEE, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY ASSIGNEE, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND ASSIGNOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

19. WAIVER OF RIGHT TO TRIAL BY JURY. ASSIGNOR, AND ASSIGNEE BORROWER ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND, THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED BY A JUDGE SITTING WITHOUT A JURY.

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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

LOT 1 (EXCEPT THE SOUTH 40 FEET THEREOF) IN BLOCK 45 IN THE
SUBDIVISION OF BLOCKS 45, 47, 48, 50, 51 AND 52 IN THE CIRCUIT COURT
PARTITION SECTION 31, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE
THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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